IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.747 OF 2005

Mr. Harakchand K. Chheda ...Applicant.

V/s

State of Maharashtra ...Respondent.

Mr. G.S. Godbole i/b Subodh Desai for the applicant.

Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 4th April 2005

P.C.

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant is challenging the order passed by the Trial Court dismissing the application for discharge. The applicant, thereafter, preferred a Revision Application before the Sessions court which was also rejected by order dated 10/1/2005. The applicant is challenging both these orders in this application under section 482 of the Criminal Procedure Code.

3. It is an admitted position that during the pendency of the Criminal Revision Application, a charge has been framed against the accused under section 406 and 420 and the matter is already ripe for final hearing.

4. The learned Counsel appearing on behalf of the applicant has submitted that from the perusal of FIR and the statement of the complainant which was recorded pursuant to the FIR, it can be seen that no offence punishable under section 406 and 420 of the IPC has been made out. It is submitted that in the statement which is recorded along with the FIR, it is admitted by the complainant that various amounts were paid by the complainant to the accused from 1994-95 and that assurance was given by the accused of repaying the principal amount with high interest. It is submitted that it is not even disputed that initially the said amounts were in fact repaid and only after 1998 the principal amount as also the interest has not been repaid. It is further submitted that from reading the complaint as a whole, it can be seen that there was no dishonest intention on the part of the accused at the time when the said amount was accepted in 1994-95 and that subsequently due to losses incurred by the accused, the principal and the interest could not be repaid. He submitted that this complaint and the averments made in the complaint, if they are taken on their face value, do not constitute an offence under sections 406 and 420 of the Indian Penal Code. He submitted that, at the highest, it

would amount to breach of contract for which only remedy available would be to file a Civil Suit for recovery of the amount due and payable to the complainant.

5. In support of his submission, the learned Counsel appearing on behalf of the applicant has relied upon the judgment of the Supreme Court in the case of Ajay Mitra Vs. State of M.P. and Others reported in (2003) 3 SCC 11 and particularly paragraphs 16 and 17 of the said judgment and also the judgment of the Supreme Court in the case of Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and another reported in (2000) 4 SCC 168 and the learned Counsel relied on the observations made by the Supreme Court in paragraphs 14 and 15 of the said Judgment. He also relied upon the judgment of the Supreme Court in the case of S.N. Palanitkar Vs. State of Bihar reported in AIR 2001 SC 2960 and particularly paragraphs 8, 9 and 15 of the said Judgment.

6. The learned Counsel appearing on behalf of the State has vehemently opposed the submissions made by the learned Counsel for the applicant. He has submitted that the charge has been framed and the charge-sheet is filed. Both the Lower Courts after

considering the statement of the complainant and the other witnesses, have prima facie come to the conclusion that the complainant and others were induced to pay these amounts and the funds so collected were diverted by the accused for his own benefit. He has taken me through the judgment and order of the Sessions Court as also the Trial Court.

7. After having considered the submissions made by both parties at length, I am of the view that the ratio laid down in the Judgments of the Supreme Court in the cases of Ajay Mitra (Supra), Hridaya Ranjan Prasad Verma (supra) and S.N. Palanitkar (Supra) would not be applicable to the facts of the present case. Ultimately, at the stage of framing of the charge, the Court has to see whether prima facie case has been made out by the complainant and the Court is not required to see whether prima facie case for conviction has been made out or not. The Supreme Court in the case of State of Bihar vs Ramesh Singh reported in AIR 1977 SC 2018 has very succinctly stated the principle which is required to be followed by the trial court while framing a charge. In para 4 of its judgment the Supreme Court has observed as under.

> "4.....An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227."

8. In the light of the observations made by the Supreme Court in the above judgment and in view of the fact that the charge-sheet has been filed, the question whether the accused had dishonest intention of inducing the complainant and others can be ascertained only after the evidence is adduced by both the parties. The second question regarding entrustment of the said amount also would be a matter of evidence. Prima facie case has been made out by the complainant as can be seen from the complaint and

the statement of other witnesses. In my view, therefore, no interference can be made by the High Court by invoking its powers under section 482 of the Criminal Procedure Code. It is clarified that if any observations are made by this Court while deciding this application or by the Lower Appellate Court, the trial court shall not be influenced by these observations and shall decide the case on its own merits and in accordance with law. Hearing of the trial is expedited. Trial Court to decide the case as expeditiously as possible and in any case within a period of six months.

9. With the above directions, application is dismissed.

V.M. KANADE, J.